IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3851 OF 2005

AFL-DHL Employees Union ... Petitioner

V/s.

M/s.DHL Worldwide Expres (India) Pvt. Ltd. ... Respondent

Mr.S.K. Talsania with Mr.K.S. Bapat for Petitioner
Mr.J.P. Cama with Mr.Bharat Goyal i/b Haresh Mehta & Co. for Respondent

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **JUNE 29, 2005**

P.C.:

. The Petition challenges an interim order passed by the Industrial Court in a complaint challenging transfers of 11 employees of the Respondent. These transfer orders have been effected after a voluntary retirement scheme was floated all over India in the establishments of the respondent. It appears that the workmen in Mumbai were not willing to accept the voluntary retirement scheme whereas in Delhi many employees accepted the same. Pursuant to this, the respondent transferred 11 employees who are covered by the present complaint. The transfer orders indicate that all terms and conditions of employment would remain unchanged after transfer. A charter of demand is pending in respect of the general demands before the

Conciliation Officer. Besides this, a notice of change was issued by the company on 11.12.2003. The notice of change is in respect of various demands raised by the employer including change in the shift systems and working hours.

2. There is no dispute that the 11 employees covered by the transfer orders have joined service as directed. However, their grievance is that despite an assurance in the letter transferring them that the terms and conditions of their employment would not change, they have been asked to work for more than 51 hours per week in Delhi whereas they worked only for forty eight hours in Mumbai.

3. Mr.Cama submits that the working hours during which the transferred employees are required to work are those applicable to the Delhi establishment and not the working hours of the Mumbai establishment. According to the learned Counsel, once an employee is transferred although his wages would be protected, the other conditions of service need not be protected. He further submits that the working hours cannot be termed as a condition of service and, therefore, there is no need to issue any further orders in this respect as the employer is paying all the workmen the wages that they were

drawing in Mumbai.

4. The transfer order very clearly states that all the terms and conditions of employment would remain unchanged.

5. According to Mr.Talsania, because of the impugned order, there is every possibility that the employer would contend that the transferred employees are not covered by the pending charter of demands and the references already made for adjudication.

6. In reply, Mr.Cama makes a statement on instruction that the transferred employees would be covered by the charter of demands pending before the conciliation officer as also the reference for adjudication, if made pursuant thereto and the reference relating to the notice of change dated 11.12.2003.

7. A prayer is made on behalf of the Petitioner for restraining the respondent-company from effecting any further transfers from Mumbai. Mr.Talsania submits that such a prayer is required to be granted as it is the design of the respondent-employer to bring about a situation whereby they would transfer all the workmen to Delhi and other places in retaliation to the workmen

having refused to accept voluntary retirement.

8. Mr.Cama submits that the employer's right to transfer cannot be fettered as there is a clause in the contract of service permitting such transfer. He relies on the judgments of the Supreme Court in the case of *Pearlite Liners (P) Ltd. v/s. Manorama Sirsi,* **(2004) 3 SCC 172** and *Management of Addisons Paints & Chemicals Ltd. v/s. Workmen represented by Secretary (AP & C) Assistants Association and Others* reported in **2001 I CLR 587** in support of his submission that the employer's right to transfer cannot be threatened. He submits that the employer wishes to transfer more employees in the near future. Therefore, no such restrictions be imposed on the employer's right. However, he states that not more than 10 employees would be transferred in the near future. Keeping this in view and accepting the statements of the learned Counsel for the employer, the Petition is disposed off with the following directions:

i) The statement made by the learned Counsel for the employer that the transferred employees will be covered by the pending charter of demands in respect of general demands and the pending reference pertaining to the notice of change

dated 11.12.2003 is accepted.

ii) The statement of the learned Counsel for the employer that only 10 employees would be transferred from Mumbai in the near future is accepted.

iii) The terms and conditions of service of the 11 transferred employees will remain the same as they were in Mumbai including wages, allowances and other monetary benefits, hours of work and rest intervals, leave and holidays, shift working, classification, customary concessions or privileges and rules of discipline.

iv) The Industrial Court shall dispose off the complaint within three months from today. In the event the Industrial Court does not dispose off the complaint within three months, any further transfers would be made by the employer subject to such permission being granted by the Industrial Court.

9) Writ Petition is disposed off in the aforestated terms.